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**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE: B-190159 DATE: December 16, 1977**

**MATTER OF: Southern Oregon Aggregate, Inc.**

**DIGEST:**

Where commercial carrier delivers bid envelope to central delivery point on Government installation rather than building designated in IFB because it is customary to do so, subsequent mishandling of bid by Government is not paramount reason for late receipt and bid is therefore late and cannot be considered.

By letter dated September 14, 1977, Southern Oregon Aggregate, Inc. (S.O.A.), protested the rejection of its bid under invitation for bids (IFB) No. YA-511-IFB7-137 issued August 5, 1977, by the Department of the Interior, Bureau of Land Management (BLM), Denver Service Center, Denver, Colorado.

BLM contends that S.O.A.'s bid was late and thus cannot be considered for award. S.O.A. argues in reply that its bid was late due to misleading circumstances or other Government fault. The facts of the case are that the IFB was for the construction of the BLM Medford District Office and Wareyard Complex Site Development in Medford, Oregon. Bid opening was scheduled for August 26, 1977, BLM, Building 50, Room 1272, Denver Federal Center, Denver, Colorado, at 2 p.m. Included in the IFB documents was a label to be attached to the bid envelope, and it bore the following address:

"Bureau of Land Management, D-511  
Denver Service Center  
Bldg. 50, Denver Federal Center  
Denver, Colorado 80225"

The IFB also included Standard Form 22, "Instructions to Bidders," with an amended paragraph 7, entitled "Late Bids, Modification of Bids or Withdrawal of Bids," which provided in pertinent part:

"(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and either:

"(1) It was sent by registered or certified mail not later than the fifth calendar day prior to the date specified for the receipt of bids (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th or earlier); or

"(2) It was sent by mail (or telegram if authorized) and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation.

\* \* \* \* \*

"(c) The only acceptable evidence to establish:

\* \* \* \* \*

"(2) The time of receipt at the Government installation is the time-date stamp of such installation on the bid wrapper or other documentary evidence of receipt maintained by the installation."

S.O.A.'s bid, bearing the address and information required by the IFB, was sent by air freight from Medford, Oregon, on August 25, 1977, at 1 p.m. Upon its arrival in Denver, the bid envelope was placed in the custody of a commercial delivery service which hand-carried it to the Denver Federal Center on August 25, 1977.

It is undisputed that the envelope was not delivered as addressed to Building 50, but was actually delivered to the central receiving point in Building 41. There it was signed for by a BLM employee at 1:30 p.m., August 25, 1977, a little more than 24 hours before the scheduled bid opening. It appears from the record that delivery services frequently have difficulty making deliveries to the mailroom in Building 50 so that, either by direction or on their own initiative, the carriers often make the deliveries for Building 50 at the central receiving point in Building 41. In the present case, it appears that the delivery man made no attempt to make delivery at Building 50, but went directly to Building 41 where the bid envelope was routinely accepted.

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After signing for the envelope, the BLM employee observed that it contained a bid and placed it in an outgoing box designated for Building 50. BLM records indicate that a mail pickup was made at Building 41 on the afternoon of August 25, 1977, and that distribution of the mail acquired from that collection was made the next morning, August 26, 1977. However, S.O.A.'s bid envelope was never delivered to the bid opening room and was never considered for the award. Subsequent investigations by both BLM and S.O.A. generally conclude that the painting of the mailroom area on August 25, 1977, disrupted the ordinary routine of the Building 41 mailroom so that somehow during the moving of furniture S.O.A.'s bid envelope slipped behind a copy machine and remained undiscovered until September 8, 1977.

Yet, prior to this discovery, S.O.A. made a telephone inquiry about the outcome of the bid opening and was then advised that no bid from it had been read or considered. Later on September 7, 1977, while S.O.A. was still trying to determine what exactly had happened to its bid envelope, it was notified through a telegram from BLM that even if the bid was located, it was a "late bid" within the meaning of Federal Procurement Regulations (FPR) § 1-2.303 (1964 ed. amend. 178) and would not be considered. It is this determination that S.O.A. protests because it believes that if the bid was late it was due to misleading circumstances or other Government fault.

The general rule is that the bidder has the responsibility for the delivery of its bid to the proper place at the proper time. Federal Contracting Corp., et al., 54 Comp Gen. 304 (1974), 74-2 CPD 229. Any exceptions to the rule requiring rejection of late bids may be permitted only in the exact circumstances provided for in the invitation. See Defense Products Company, B-185889, April 7, 1976, 76-1 CPD 233; Greer Hydraulics, Inc., B-182826, April 22, 1975, 75-1 CPD 249; Rocket Research Corporation, B-179405, January 24, 1974, 74-1 CPD 28.

S.O.A. acknowledges the general rule, but seeks to have its case come under the "wrong place" rule, an exception to the general rule, that allows acceptance of a bid received late due to improper Government directions. Specifically, S.O.A. argues that its agent, the commercial carrier, was misled by Government personnel so that it submitted the bid "on time" but to the "wrong place." S.O.A. further argues, citing the rule of Hyster Company, 55 Comp. Gen. 267 (1975), 75-2 CPD 176, that a hard-carried bid received late under such circumstances can be considered because there has been no opportunity for tampering and thus no compromising of the integrity of the competitive bid system.

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The line of decisions developed by our Office in regard to bids hand-carried by commercial carrier has generally held that a late bid delivered by a commercial carrier rather than by mail cannot be considered even though its lateness can be attributed to Government mishandling. See Defense Products Company, supra; Greer Hydraulics, Inc., supra; Rocket Research Corporation, supra; FPR § 1-2.303-5 (1964 ed. amend. 178). These decisions adhere to the narrow exception allowed by FPR § 1-2.201(a)(31) (1964 ed. amend. 178) and incorporated into many late bid clauses, such as in paragraph 7(a)(2) of the subject IFB, set out above. On the other hand, we have also stated that a strict and literal application of such regulations should not be utilized to reject a bid where to do so would contravene the intent and spirit of the late bid regulation. See I&E Construction Company, 55 Comp. Gen. 1340 (1976), 76-2 CPD 139; Hydro Fitting Mfg. Corp., 54 Comp. Gen. 999 (1975), 75-1 CPD 331; Scot, Incorporated, B-189345, November 30, 1977.

This apparent conflict between the general rule, that within narrow exceptions the bidder is responsible for the delivery of its bid to the proper place at the proper time, and the other rule, that an overly technical application of the late bid regulations should be avoided, has been partially resolved in a line of decisions which require that any Government mishandling be the "paramount reason" for the late receipt before a technically late bid will be considered. See Surplus Tire Sales - reconsideration, B-187322, February 28, 1977, 77-1 CPD 145; Surplus Tire Sale, B-187322, December 13, 1976, 76-2 CPD 479, S&Q Corporation, B-186794, November 11, 1976, 76-2 CPD 402; Record Electric Inc., 56 Comp. Gen. 4 (1976), 76-2 CPD 315.

Therefore, since S.O.A. is responsible for the delivery of its bid to the proper place at the proper time, and having chosen commercial carrier rather than mail, it cannot invoke the Government mishandling exception allowed by paragraph 7(a)(2) of the IFB. However, its bid may still be considered if the bid was delivered to the wrong place due to Government fault and this fault is the paramount reason for the late receipt.

But the record indicates that the bid was delivered to the wrong place, not due to Government fault, but because the commercial carrier, as S.O.A.'s agent, made the independent decision that the envelope should be delivered to Building 41 rather than to Building 50 as addressed. Nothing in the record suggests that it was impossible for delivery to be made

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to Building 50 or that Government personnel frustrated or discouraged any attempt to make delivery to Building 50. Only an undefined custom among commercial carriers dictated delivery to Building 41 rather than to Building 50. Even if BLM shares the responsibility for the growth of this custom, this was not the paramount reason for the late receipt of S.O.A.'s bid. Consequently, its bid was properly not considered for award.

Accordingly, S.O.A.'s protest is denied.

  
Deputy Comptroller General  
of the United States